

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHINEMEREM OSISIOMA,

Plaintiff,

v.

TRANS UNION, LLC, et al.,

Defendants.

Case No.: 21cv2023-MMA (MSB)

ORDER:

(1) GRANTING IN PART JOINT MOTION TO CONTINUE EARLY NEUTRAL EVALUATION CONFERENCE [ECF NO. 21]

AND

(2) SUA SPONTE CONTINUING CASE MANAGEMENT CONFERENCE

On February 17, 2022, the parties filed a “Joint Motion to Continue Ealy Zoom Neutral Evaluation Conference.” (ECF No. 21.) They ask the Court to continue the video Early Neutral Evaluation Conference (“ENE”) currently scheduled for February 25, 2022, at 9:30 a.m. until March 18, 2022. (Id. at 2.) In support, the parties state that counsel for Defendant Trans Union LLC has a scheduling conflict on the date of the scheduled ENE. (Id.) The parties further contend that they require additional time “to evaluate the merits of the claim in advance of the ENE” so that they can “participate in a productive ENE.” (Id.)

1 Having considered the parties' joint motion and finding good cause, the Court
2 **GRANTS IN PART** the motion. In light of the Court's unavailability on March 18, 2022,
3 the date proposed by the parties for the rescheduled ENE, the Court issues the following
4 **ORDERS:**

5 An ENE of your case will be held via **video conference** on March 17, 2022, at
6 9:30 a.m., to be hosted through the Court's ZoomGov account. All discussions at the
7 ENE Conference will be informal, off the record, privileged, and confidential. Counsel
8 for any non-English speaking party is responsible for arranging for the appearance of an
9 interpreter at the conference. The following rules and deadlines apply:

10 **1. Personal Appearance of Parties Required:** All named parties, party
11 representatives, including claims adjusters for insured defendants, as well as the
12 principal attorney(s) responsible for the litigation, must participate in the video
13 conference, and be legally and factually prepared to discuss and resolve the case.
14 Counsel appearing without their clients (whether or not counsel has been given
15 settlement authority) will be cause for immediate imposition of sanctions and may also
16 result in the immediate termination of the conference.

17 **2. Full Settlement Authority Required:** A party or party representative with
18 full settlement authority¹ must be present at the conference. Retained outside
19 corporate counsel shall not appear on behalf of a corporation as the party
20 representative who has the authority to negotiate and enter into a settlement.

21 ///

22
23
24 ¹ "Full settlement authority" means that the individuals at the settlement conference must be
25 authorized to fully explore settlement options and to agree at that time to any settlement terms
26 acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989).
27 The person needs to have "unfettered discretion and authority" to change the settlement position of a
28 party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485–86 (D. Ariz. 2003). The purpose of requiring a
person with unlimited settlement authority to attend the conference contemplates that the person's
view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum
certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595–97 (8th Cir.
2001).

1 **3. Confidential ENE Statements Required:** No later than March 10, 2022, the
2 parties shall submit directly to Magistrate Judge Berg’s chambers (via hand delivery or
3 by e-mail to the Court at efile_berg@casd.uscourts.gov), confidential settlement
4 statements. The ENE statement is limited to **five (5) pages or less, and up to five (5)**
5 **pages of exhibits or declarations.** Each party’s ENE statement must outline (1) the
6 nature of the case and the claims, (2) position on liability or defense, (3) position
7 regarding settlement of the case with a **specific demand/offer for settlement**, and
8 (4) any previous settlement negotiations or mediation efforts.

9 If a specific demand or offer cannot be made at the time the ENE statement is
10 submitted, then the reasons as to why a demand or offer cannot be made must be
11 stated. Further, the party must explain when they will be in a position to state a
12 demand or offer. General statements such as a party will “negotiate in good faith” is
13 not a specific demand or offer. The ENE statement should be submitted confidentially
14 and need not be shared with other parties.

15 **4.** The Court will use its official Zoom video conferencing account to hold the
16 ENE. **IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on computers through a
17 download on the Zoom website (<https://zoom.us/meetings>) or on mobile devices
18 through the installation of a free app.² Joining a Zoom conference does not require
19 creating a Zoom account, but it does require downloading the .exe file (if using a
20 computer) or the app (if using a mobile device). Participants are encouraged to create
21 an account, install Zoom, and familiarize themselves with Zoom in advance of the ENE.³
22 There is a cost-free option for creating a Zoom account.

23 ///

24
25
26 ² If possible, participants are encouraged to use laptops or desktop computers for the video conference,
27 as mobile devices often offer inferior performance.

28 ³ For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>.

1 5. Prior to the start of the ENE, the Court will e-mail each ENE participant an
2 invitation to join a Zoom video conference. Again, if possible, participants are
3 encouraged to use laptops or desktop computers for the video conference, as mobile
4 devices often offer inferior performance. Participants shall join the video conference by
5 following the ZoomGov Meeting hyperlink in the invitation. **Participants who do not**
6 **have Zoom already installed on their device when they click on the ZoomGov Meeting**
7 **hyperlink will be prompted to download and install Zoom before proceeding.** Zoom
8 may then prompt participants to enter the password included in the invitation. All
9 participants will be placed in a waiting room until the ENE begins.

10 6. Each participant should plan to join the Zoom video conference **at least five**
11 **minutes before** the start of the ENE to ensure that the ENE begins promptly at **9:30 a.m.**
12 **The Zoom e-mail invitation may indicate an earlier start time, but the ENE will begin at**
13 **the Court-scheduled time.**

14 7. Zoom’s functionalities will allow the Court to conduct the ENE as it
15 ordinarily would conduct an in-person ENE. That is, the Court will begin the ENE with all
16 participants joined together in a main session. After an initial discussion in the main
17 session, the Court will divide participants into separate, confidential sessions, which
18 Zoom calls Breakout Rooms.⁴ In a Breakout Room, the Court will be able to
19 communicate with participants from a single party in confidence. Breakout Rooms will
20 also allow parties and counsel to communicate confidentially without the Court.

21 8. No later than **March 10, 2022**, counsel for each party shall send an e-mail
22 to the Court at efile_berg@casd.uscourts.gov containing the following:

23 a. The **name and title of each participant**, including all parties and
24 party representatives with full settlement authority, claims adjusters for insured
25 defendants, and the primary attorney(s) responsible for the litigation;

26 _____

27
28 ⁴ For more information on what to expect when participating in a Zoom Breakout Room, visit:
<https://support.zoom.us/hc/en-us/articles/115005769646>.

1 b. An **e-mail address for each participant** to receive the Zoom video
2 conference invitation; and

3 c. A **telephone number where each participant** may be reached so that
4 if technical difficulties arise, the Court will be able to proceed telephonically instead of
5 by video conference. (If counsel prefers all participants of their party on a single
6 conference call, counsel may provide a conference number and appropriate call-in
7 information, including an access code, where all counsel and parties or party
8 representatives for that side may be reached as an alternative to providing individual
9 telephone numbers for each participant.)

10 **9.** All participants shall display the same level of professionalism during the
11 ENE and be prepared to devote their full attention to the ENE as if they were attending
12 in person. Because Zoom may quickly deplete the battery of a participant's device, each
13 participant should ensure that their device is plugged in or that a charging cable is
14 readily available during the video conference.

15 **10. New Parties Must be Notified by Plaintiff or Plaintiff's Counsel:** Plaintiff's
16 counsel shall give notice of the ENE to parties responding to the complaint after the
17 date of this notice.

18 **11. Case Management Conference:** If the case does not settle during the ENE,
19 the Court will conduct a Case Management Conference. In preparation for this
20 conference, the parties must do the following:

21 a. Meet and confer pursuant to Fed. R. Civ. P. 26(f) no later than
22 **March 3, 2022;**

23 b. File a Joint Discovery Plan no later than **March 10, 2022.** Agreements
24 made in the Joint Discovery Plan will be treated as binding stipulations that are
25 effectively incorporated into the Court's Case Management Order. The Joint Discovery
26 Plan must be one document and must cover the parties' views and proposals for each
27 item identified in Fed. R. Civ. P. 26(f)(3). In addition, the Joint Discovery Plan must
28 include the following:

1 i. **Service:** A statement as to whether any parties remain to be
2 served and, if so, a proposed deadline for service;

3 ii. **Amendment of Pleadings:** The extent to which parties, claims, or
4 defenses are expected to be added or dismissed and a proposed deadline for amending
5 the pleadings;

6 iii. **Protective Order:** Whether a protective order is contemplated to
7 cover the exchange of confidential information and, if so, the date by which the
8 proposed order will be submitted to the Court;

9 iv. **Privilege:** The procedure the parties plan to use regarding claims
10 of privilege and whether an order pursuant to Fed. R. Evid. 502 will be sought;

11 v. **Evidence Preservation:** Whether the parties have discussed
12 issues related to the preservation of relevant evidence and if there are areas of
13 disagreement, how the parties are resolving them;

14 vi. **Electronic Discovery:** In addition to the requirements set forth in
15 Fed. R. Civ. P. 26(f)(3)(C), the parties must describe their agreements regarding
16 methodologies for locating and producing electronically stored information and the
17 production of metadata, and must identify any issues or agreements regarding
18 electronically stored information that may not be reasonably accessible (see Fed. R. Civ.
19 P. 26(b)(2)(B));

20 vii. **Discovery:** In addition to the requirements of Fed. R. Civ. P.
21 26(f)(3)(B), the parties must describe the discovery taken to date (if any), any proposed
22 limitations or modifications of the discovery rules, and any identified discovery disputes;
23 and

24 viii. **Related Cases:** Any related cases or proceedings pending before
25 another judge of this court, or before another court or administrative body.

26 c. Exchange initial disclosures pursuant to Rule 26(a)(1)(A-D) no later than
27 **March 10, 2022.**

28 ///

1 **12. Requests to Continue an ENE Conference:** Requests to continue ENEs are
2 rarely granted. An ENE may be rescheduled only upon a showing of good cause and
3 adequate notice to the Court. **Absent good cause, requests for continuances will not**
4 **be considered unless submitted in writing no fewer than seven (7) calendar days prior**
5 **to the scheduled conference.**

6 **IT IS SO ORDERED.**

7 Dated: February 17, 2022

8 
9 _____
10 Honorable Michael S. Berg
11 United States Magistrate Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28